THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.3227 OF 2007

DATED APRIL, 2007

BETWEEN

Yelikatta Ramadass @ Varikuppala Ramadass and others

… Petitioners

AND

The District Collector, Nalgonda District, Nalgonda and another.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.3227 OF 2007

ORDER:

The three petitioners filed the present writ petition seeking a writ of Mandamus declaring the action of the respondents, namely, the District Collector, Nalgonda and Mandal Revenue Officer, Chityal Mandal (MRO) in laying the pathway in the land comprised in survey Nos.498, 523, 499, 522 and 521 situated at Veliminedu village of Chityal Mandal without due process of law as illegal and arbitrary. It is the case of the petitioners that their grandfather late Ramaiah had purchased agricultural land from Patangi Tirumala Bai under an unregistered document of 1952. He was in possession and cultivating the same till his death. After death of Ramaiah, first petitioner and the husband of the third petitioner were cultivating the land. As the legal heir of Tirumala Bai (vendor of grandfather Ramaiah) did not come forward to register the land, the petitioners filed a suit for declaration of title and perpetual injunction claiming the land in survey Nos.522, 523 and 524. The same was decreed on 25.02.1989 by the Court of the District Munsif, Ramannapet. It is also alleged that the land in survey Nos.497, 498 and 499 admeasuring Acs.1.39 guntas was purchased by the first petitioner from Aroori Sarvaiah under registered sale deed, dated 23.03.2001 and an extent of Acs.1.37 guntas in survey Nos.497 VOO, 498 VOO and 499 VOO was purchased by Yelikatta Venkatesham @ Varikuppala Venkatesham. All these lands are in a compact block and allegedly under possession of the petitioners. The petitioners alleged that they raised citrus and mango gardens.

The owner of the land in survey Nos.518 and 519 gave a complaint to second respondent alleging that the petitioners occupied the Government path between the lands in survey Nos.498 and 523, 499 and 522, and 500 and 521. The second respondent then issued notice, dated 08.02.2007 informing that the village elders already

asked the petitioners to vacate the pathway and the petitioners were asked to appear for enquiry on 11.02.2007. On that day, second respondent allegedly threatened the petitioners that they will be evicted. They apprehend that the second respondent is likely to cut barbed wire fencing and destroy the trees and therefore, they filed the instant writ petition. At the stage of Admission itself, a counter affidavit is filed.

The matter was heard at the preliminary stage on 20.02.2007. Learned Assistant Government Pleader for Revenue (General-T) opposed the writ petition and sought time for filing counter affidavit. Therefore, the matter was admitted and *status quo* was ordered. Subsequently, the second respondent filed counter affidavit along with W.V.M.P.No.624 of 2007 for vacating the interim status quo order. A reply affidavit is also filed. Therefore, the matter was heard finally and is being disposed of by this order.

The case of the respondents is that after receiving complaint submitted by Varikuppala Ramadass, S/o Narasimha alleging that petitioners occupied the pathway running between survey Nos.498 and 501 on one hand and survey Nos.521 and 523 on the other hand, the village map and the ground position was noticed. It was found that the pathway was occupied by the petitioners. Therefore, the MRO conducted Gram Sabha on 02.02.2007. The petitioners were informed that they are in occupation of the pathway. Before the Gram Sabha, they agreed to clear the pathway within four days. As they did not respond, notice dated 08.02.2007 was issued asking them to be present on 11.02.2007 for fixing the pathway in the presence of the surveyors. However, the Additional Revenue Inspector and surveyor could not be sent on that day. Therefore, the petitioners were informed through Village Revenue Officer that demarcation work of pathway would be done on 20.02.2007. Accordingly, on that day in the presence of petitioners and their relatives, the Surveyor peg marked the pathway and conducted Panchanama. Again, when the village officer went to the site on 20.02.2007, the petitioners prevented the officials by producing the orders of this Court. If the pathway is not restored, it will be difficult for the ryots to go to the fields as the pathway is leading to the assigned lands in survey Nos.512 and 519.

Learned counsel for the petitioners placed strong reliance on Board Standing Order 26 in support of the contention that even when the roads, streets and pathways are encroached upon, it is not always permissible for the MRO to initiate action under A.P.Land Encroachment Act, 1905 (Encroachment Act, for brevity). He would urge that the petitioners or their predecessors are in possession of the land for over six decades, that they raised mango and citrus trees and

when their encroachment has been unobjectionable for all these years, the MRO cannot take any action for evicting the petitioners.

Learned Assistant Government Pleader, however, submits that the encroachment of pathway or a road must be treated as objectionable because a pathway is intended for being used as a road and petitioners cannot claim any right over the pathway. According to the learned Assistant Government Pleader, the period during which the encroachment existed is irrelevant when there are complaints from the residents that due to encroachment of pathway, they are deprived of their right to enjoy the land assigned to them. He points out that in survey Nos.512 and 519, it will be difficult to those assignees to go to their lands unless the pathway is restored.

In the counter affidavit filed by the MRO, an averment is made that on a complaint made by Varikuppala Ramdass,
S/o Narasimha, village map was verified when it was found that there is a pathway running between the land comprised in survey Nos.498 to 500 and the land comprised in survey Nos.521 to 523. This allegation is not specifically denied in the reply affidavit. Therefore, the petitioners are certainly in occupation of the pathway, which they/their predecessors encroached. In such an event, can it be said that they have a right to prevent the MRO from taking action under the Encroachment Act. Section 2(2) of the Encroachment Act declares that all public roads and streets vested in any local authority shall be deemed to be property of the Government. Section 3 of the Encroachment Act lays down that when a person is unauthorisedly in occupation of the Government land, such person shall be liable to pay the assessment levied by the Tahsildar and Deputy Tahsildar. If it is found that any person unauthorisedly occupied the Government land, the Collector or Tahsildar or Deputy Tahsildar may summarily evict such encroacher. The procedure as contemplated under Sections 6 and 7 of the Encroachment Act has to be followed. When a notice under Section 7 of the Encroachment Act is issued to the encroacher calling upon him to show cause as to why he should not be summarily evicted from Government property, it is always open to such encroacher to plead that his encroachment of the Government property is unobjectionable, and therefore, summary eviction is not warranted. He has, however, no such right to prevent the revenue officials from evicting him whether or not the encroachment is objectionable, if it is found that it is necessary to evict the encroacher.

Board Standing Order (BSO) 26 exclusively deals with lands to which the Encroachment Act applies. Para 10 of BSO 26 deals with the encroachments of roads and streets, which vest in the local bodies. Sub paragraphs 1 and 2 of paragraph 10 read as under.

> **10 (1). Roads and streets which vest in Local bodies or Municipalities:-** Local Bodies are responsible for dealing with encroachments on roads and streets which vest in them and in particular they are charged with the duty of removing such of the encroachments as are objectionable.
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> Encroachments on roads and streets which vest in local bodies fall into two classes:-
> (a) those which can be ignored.
> (b) Those which cannot be ignored.
>
> Encroachments which cannot be ignored may be-
>
> (1) objectionable encroachments,
> (2) unobjectionable encroachments,
> (3) encroachments which are not objectionable at present but which may become so at some future date.
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> **(2)** Encroachments falling under class (a) will be ignored by every body interested, that is, by the local body as well as by the Revenue Department. It will be open to either authority at any time when it considers such as encroachment to have become objectionable, to cease to ignore it and to have action taken to remove it.

In plain terms, those encroachments, which can be ignored, can be treated as unobjectionable. However, as seen from paragraph 10(4), the final decision whether the encroachment is objectionable or not rests with the District Collector. A reading of BSO 26(10) in its entirety would show that an encroachment of pathway, which is unobjectionable at one point of time can become objectionable and in which case, such encroachment cannot be ignored. In the considered opinion of this Court, in the present case, that is exactly what happened. A complaint was made that the assignees of lands in survey Nos.512 to 519 are deprived of the right to use the pathway between the lands in survey Nos.498 and 500 and the land in survey Nos.521 to 523. In the usual course, the MRO ought to have initiated action under Encroachment Act. But having verified the records, he convened Gram Sabha and the petitioners allegedly accepted to remove the encroachment. This is, however, denied. Therefore, the MRO or Tahsildar has to necessarily initiate action under Encroachment Act by issuing notice under Section 7 of the Encroachment Act. This Court holds that the encroachment of pathway by petitioners cannot be ignored especially when the pathway is very much required by large number of people for convenient enjoyment of their property.

In view of the above, this Court holds that in the facts and

circumstances of the case, the petitioners have no right to continue with their encroachment of the pathway running between survey Nos.498 and 500 and the land in survey Nos.521 to 523, which statedly belongs to the petitioners. This Court also observes that the MRO/Tahsildar has to initiate necessary action under Land Encroachment Act for summarily evicting the petitioners from the said pathway.

The writ petition is accordingly disposed of. No costs.

(V.V.S.RAO,J)

.04.2007.

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